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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

MAYES, MELVIN C

ART UNIT PAPER NUMBER

1734

DATE MAILED: 09/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--|-------------------------------------|--|
| Office Action Summary | Application No. 10/762,307 | Applicant(s) POOLE ET AL. | |
| | Examiner Melvin Curtis Mayes | Art Unit 1734 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

(1)

The drawings are objected to under 37 CFR 1.83(a) because they fail to show angle θ_a as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Paragraph [0039] has been amended to refer to Fig. 9b, however Fig 9B does not show the angle θ_a as described. This is shown in Fig. 12 of copending Application 10/845,244.

Claim Objections

(2)

Claims 30 and 31 are objected to because of the following informalities: the claims should depend from system claim 23 instead of method claim 22. Appropriate correction is required.

Double Patenting

(3)

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

(4)

Claims 1-8, 11-27, 29, 32 and 33 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6, 8-12, 14-17 and 19-23 of copending Application No. 10/845,244. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Copending Application No 10/845,244 claims a label application system and method comprising a label printer, label applicator having an air-directing manifold and applicator head

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having angled face, a feed reel or label supplying means and a take-up reel or liner take-up means and thus obviously claims a label applicator having an applicator head having an angled surface, as claimed.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

(5)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(6)

Claims 1, 2, 4-8, 13-15, 17-19, 23-27 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder et al. 6,199,614 in view of Bernhard et al. 6,024,149.

Snyder et al. disclose a labeling machine having a constant tension driving system for labeling articles comprising: supply roll 16 of labels mounted on a spindle; printer 112; dispensing unit 18 with peeler bar for removing labels from the backing material; applicator 20 for applying labels to articles; driving and metering roll 114 for pulling the web from the supply roll; constant tensioning device 24 for maintaining constant tension in the web downstream of the driving and metering roll and downstream of the peel bar; and take-up drum 26 for waste backing material. The applicator may be any conventional applicator such as conventional vacuum blow applicator. The constant tensioning device may be a power dancer 108 with pivotable lever arm 118. Take-up drum is mounted on a shaft of a motor which operates to rotate

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the drum. The drum is intermittently operated depending on the position of the lever arm and the motor is activated by a limit switch (col. 5-9). Snyder et al. do not disclose providing the applicator with a head having an angled surface.

Bernhard et al. teach that in an air-blast labeling apparatus, the air-blast labeling device comprises a suction plate 16 and air blast unit having air blast plate 19 with air blast nozzles 20 and fine-meshed screen 26 to compensate for the effect of differences in the flow of air between individual blast nozzles, the air blast unit connected to a supply of compressed air and the supply of air controlled by a three-way solenoid valve. The labeling device and transport device are controlled with sensor elements. Bernhard et al. further teach that in an air-blast labeling apparatus, the air-blast device 2 includes a suction plate 16 having an inclined sliding surface 50 for the labels and provided with a plurality of elevations in the shape of saw teeth to allow the label to slide along the sliding surface and be deflected slightly downwards so that it travels at an acute angle to the suction plane beneath the suction plate. (col. 6, line 30 – col. 8, line 50).

It would have been obvious to one of ordinary skill in the art to have modified the method and machine of Snyder et al. for labeling articles by providing the vacuum blow applicator as an air blast device having suction plate and air blast unit having air blast plate and screen (air-directing manifold and baffle plate) and connected to a supply of compressed air controlled by a solenoid, as taught by Bernhard et al., as the parts of an air blast labeling device for applying labels.

It would have been obvious to one of ordinary skill in the art to have further modified the method and machine of Snyder et al. by providing the suction plate of the air blast device with an inclined sliding surface, as taught by Bernhard et al., to allow the label to slide along the sliding

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surface and be deflected slightly downwards so that it travels at an acute angle to the suction plane beneath the suction plate. By providing the suction plate with an inclined surface, the applicator head having an angled surface, as claimed, is obviously provided.

(7)

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder et al. 6,199,614 in view of Bernhard et al. 6,024,149 as applied to claim 2 above, and further in view of Marano 3,436,294.

Snyder et al. disclose that the take-up drum is mounted on a shaft of a motor which operates to rotate the drum intermittently.

Marano teaches that in a label dispensing and applying apparatus having a take-up spindle intermittently driven to wind up label depleted tape, a drive motor is intermittently energized by way of an electrically controlled clutch and brake assembly (col. 3, lines 68 – col. 4, line 7).

It would have been obvious to one of ordinary skill in the art to have modified the machine of the references as combined for labeling by providing the motor for rotating the take-up drum with a clutch, as taught by Marano, to intermittently energize the drive motor. By providing a clutch to intermittently energize the motor for the take-up drum, a clutch restricting the drum (reel) to turn in only one direction, as claimed, is obviously provided.

(8)

Claims 10, 20, 30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder et al. 6,199,614 in view of Bernhard et al. 6,024,149 as applied to claim 1, 17 and 23 above, and further in view of O'Brien, Jr. 6,220,330.

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Snyder et al. disclose that the printer is typically an "off-the-shelf" printer.

O'Brien, Jr. teaches that printing assembly that can be used to print labels include commercially available print engine available from Sato under Model No. 8485S. (col. 1, lines 1-7).

It would have been obvious to one of ordinary skill in the art to have modified the machine of the references as combined for labeling by providing the printer as a print engine available from Sato under Model No. 8485S, as taught by O'Brien, Jr., as a commercially available print assembly that can be used to print labels. By providing the printer as a Sato model, a printer which uses direct thermal or thermal transfer process is obviously provided.

(9)

Claims 11, 12, 22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder et al. 6,199,614 in view of Bernhard et al. 6,024,149 as applied to claims 1, 17 and 23 above, and further in view of Cleary et al. 3,682,743.

Cleary et al. teach that in a labeling machine, the supply reel of labels is mounted between guide discs 100, 102, at least one of the discs provided with a collar and releasable locking handle to permit spacing between the discs to be varied to accommodate supply reels of varying width and allow easy removal of the disc for easy loading of a fresh roll of labels (col. 4, lines 20-42).

It would have been obvious to one of ordinary skill in the art to have modified the machine of the references as combined for labeling by providing the supply roll as mounted on the spindle between guide discs, one of which has a releasable locking handle, as taught by Cleary et al, to permit spacing between the discs to be varied to accommodate supply reels of

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varying width and allow easy removal of the disc for easy loading of a fresh roll of labels. By providing a guide disc with a releasable locking handle, a latch or latching means for holding the labels on the feed reel (spindle), as claimed, is obviously provided.

(10)

Claims 1, 2, 4-8, 17-19 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder et al. 6,199,614 in view of Allen 5,853,530.

Snyder et al. disclose a labeling machine having a constant tension driving system comprising: supply roll 16 of labels; printer 112; dispensing unit 18 with peeler bar for removing labels from the backing material; applicator 20 for applying labels to articles; driving and metering roll 114 for pulling the web from the supply roll; constant tensioning device 24 for maintaining constant tension in the web downstream of the driving and metering roll and downstream of the peel bar; and take-up drum 26 for waste backing material. The applicator may be any conventional applicator such as conventional vacuum blow applicator. The constant tensioning device may be a power dancer 108 with pivotable lever arm 118. Take-up drum is mounted on a shaft of a motor which operates to rotate the drum. The drum is intermittently operated depending on the position of the lever arm and the motor is activated by a limit switch (col. 5-9). Snyder et al. do not disclose providing the applicator with a head having an angled surface.

Allen teaches that a label receiver for a blow-method label applicator may be provided with a chamfered front end to facilitate the transfer of labels onto the receiving face and may be provided with a receiving face having a recess for securely fixing the label on the receiving face,

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the recess having chamfered edges for assisting in positioning of the label in the recess (col. 9, lines 10-25).

It would have been obvious to one of ordinary skill in the art to have further modified the method and machine of Snyder et al. for labeling articles by providing the vacuum blow applicator with a chamfered front end and/or a receiving face having a recess with chamfered edges, as taught by Allen, to facilitate the transfer of labels onto the receiving face or to securely fix the label on the receiving face, chamfered edges of the recess for assisting in positioning of the label in the recess. By providing the applicator with a chamfered front end and/or a receiving face with recess having chamfered edges, an applicator head having an angles surface, as claimed, is obviously provided.

(11)

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder et al. 6,199,614 in view of Allen 5,853,530 as applied to claim 2 above, and further in view of Marano 3,436,294.

Snyder et al. disclose that the take-up drum is mounted on a shaft of a motor which operates to rotate the drum intermittently.

Marano teaches that in a label dispensing and applying apparatus having a take-up spindle intermittently driven to wind up label depleted tape, a drive motor is intermittently energized by way of an electrically controlled clutch and brake assembly (col. 3, lines 68 – col. 4, line 7).

It would have been obvious to one of ordinary skill in the art to have modified the machine of the references as combined for labeling by providing the motor for rotating the take-

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up drum with a clutch, as taught by Marano, to intermittently energize the drive motor. By providing a clutch to intermittently energize the motor for the take-up drum, a clutch restricting the drum (reel) to turn in only one direction, as claimed, is obviously provided.

(12)

Claims 10, 20, 30 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder et al. 6,199,614 in view of Allen 5,853,530 as applied to claim 1, 17 and 23 above, and further in view of O'Brien, Jr. 6,220,330.

O'Brien, Jr. teaches that printing assembly that can be used to print labels include commercially available print engine available from Sato under Model No. 8485S. (col. 1, lines 1-7).

It would have been obvious to one of ordinary skill in the art to have modified the machine of the references as combined for labeling by providing the printer as a print engine available from Sato under Model No. 8485S, as taught by O'Brien, Jr., as a commercially available print assembly that can be used to print labels. By providing the printer as a Sato model, a printer which uses direct thermal or thermal transfer process is obviously provided.

(13)

Claims 11, 12, 22 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder et al. 6,199,614 in view of Allen 5,853,530 as applied to claims 1, 17 and 23 above, and further in view of Cleary et al. 3,682,743.

Cleary et al. teach that in a labeling machine, the supply reel of labels is mounted between guide discs 100, 102, at least one of the discs provided with a collar and releasable locking handle to permit spacing between the discs to be varied to accommodate supply reels of

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varying width and allow easy removal of the disc for easy loading of a fresh roll of labels (col. 4, lines 20-42).

It would have been obvious to one of ordinary skill in the art to have modified the machine of the references as combined for labeling by providing the supply roll as mounted on the spindle between guide discs, one of which has a releasable locking handle, as taught by Cleary et al, to permit spacing between the discs to be varied to accommodate supply reels of varying width and allow easy removal of the disc for easy loading of a fresh roll of labels. By providing a guide disc with a releasable locking handle, a latch or latching means for holding the labels on the feed reel (spindle), as claimed, is obviously provided.

Response to Arguments

(14)

Applicant's arguments filed July 11, 2005 have been fully considered but they are not persuasive.

Applicant argues that Snyder shows a flat head of the applicator 20 while in Bernhard, the inclined surface does not operate as an applicator head or even as an applicator, and thus the combination would not result in Applicant's invention. Applicant argues that Allen and Snyder do not disclose or suggest all the claimed features.

(15)

Applicant claims in Claims 1, 17 and 23, "the applicator head having an angled surface." As claimed, the angled surface is not limited only to the surface of the applicator head on which the label is received. Bernhard teaches providing the suction plate (applicator head) of the air-

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blast device with an angled inclined sliding surface to allow the label to slide along the sliding surface and be deflected slightly downwards so that it travels at an acute angle to the suction plane beneath the suction plate. Thus Bernhard suggests providing an applicator head having an “angled surface.”

Nevertheless, Allen clearly teaches providing the surface of the applicator on which a label is received with an angled surface because Allen teaches providing the receiving face of a label applicator with a recess for securely fixing the label on the receiving face, the recess having chamfered edges for assisting in positioning of the label in the recess (see Fig. 6). By providing a recess having chamfered edges, the applicator receiving surface is obviously provided with an angled surface and thus an applicator head is provided having an angled surface.

Conclusion

(16)

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


(17)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Curtis Mayes whose telephone number is 571-272-1234.

The examiner can normally be reached on Mon-Fri 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Melvin Curtis Mayes
Primary Examiner
Art Unit 1734

MCM
September 26, 2005